Supreme Court, U.S.
FILED

001904 JUN 2 0 2001

OFFICE OF THE CLERK

No. ____

# In the Supreme Court of the United States

MICHAEL S. PIDDINGTON,
*Petitioner*,

v.

STATE OF WISCONSIN,
*Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

## PETITION FOR WRIT OF CERTIORARI

RALPH A. KALAL
*Counsel of Record*
MICHELE A. TJADER
KALAL & ASSOCIATES
217 S. HAMILTON STREET
FIFTH FLOOR
MADISON, WI 53703-3266
(608) 255-9295

*Counsel for Petitioner*

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

87pp

## QUESTION PRESENTED

May a state allow police to refuse to accommodate an arrested drunk driver who is profoundly deaf by failing to meaningfully convey to him the implied consent law warnings when the state allows other means to obtain the same evidence?

## PARTIES TO THE PROCEEDINGS

The parties are:

Michael S. Piddington, petitioner to this Court and defendant in the state court proceedings. Mr. Piddington is an individual without corporate affiliation.

The State of Wisconsin, respondent in this Court and the plaintiff in the state court proceedings.

## TABLE OF CONTENTS

Question Presented . . . . . i

Parties to the Proceedings . . . . . ii

Table of Contents . . . . . iii

Table of Authorities . . . . . iv

Opinion Below . . . . . 1

Jurisdiction . . . . . 1

Constitutional and Statutory Provisions Involved . . . . . 2

Statement of the Case . . . . . 5

Reasons for Granting the Writ . . . . . 11

Conclusion . . . . . 14

APPENDIX

**Appendix A**
Court of Appeals Opinion, 3/22/01 . . . . . 1a

**Appendix B**
Court of Appeals Decision, 1/27/00 . . . . . 48a

**Appendix C**
Dane County Circuit Court Decision and Order, 5/10/99 . . . . . 65a

## TABLE OF AUTHORITIES

**Cases**

City of Cleburne v. Cleburne Living Center,
473 U.S. 432 (1985) . . . . . 13

County of Ozaukee v. Quelle,
198 Wis.2d at 269, 542 N.W.2d 196
(Ct. App. 1995) . . . . . 13

Rewolinski v. Morgan,
896 F. Supp. 879 (E.D. Wis. 1995) . . . . . 12

Scales v. State,
64 Wis.2d 485, 219 N.W.2d 286 (1974) . . . . . 13

Schmerber v. California,
384 U.S. 757 (1963) . . . . . 14

**Constitutional Provisions, Statutes, and Other Authorities**

U.S. Const., Amend. XIV . . . . . 2

Wisconsin Statute § 343.305 . . . . . 5
§ 343.305(2) . . . . . 2-3
§ 343.305(3) . . . . . 3-4
§ 343.305(4) . . . . . 4-5, 10, 11, 12

Rehabilitation Act of 1973 . . . . . 13

Americans with Disabilities Act (ADA) . . . . . 13

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of *certiorari* issue to review the judgment of the Wisconsin Supreme Court entered in *State of Wisconsin v. Michael S. Piddington*, appeal no. 99-1250-CR, on March 22, 2001, affirming the opinion of the Wisconsin Court of Appeals, District IV in that appeal, which decision reversed the order of the circuit court for Dane County in State of Wisconsin v. Piddington, case number 99 CT 297, suppressing blood samples drawn from petitioner pursuant to the Implied Consent law for use as evidence at trial.

## OPINION BELOW

The opinion issued by the Wisconsin Supreme Court in *State v. of Wisconsin v. Michael S. Piddington*, appeal no. 99-1250-CR, appears in Appendix A to the petition. It is published at 233 Wis. 2d 257 (2001).

## JURISDICTION

The date on which the highest state court decided this case was March 22, 2001. A copy of that decision appears in the Appendix to this Petition.

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wisconsin statute section 343.305(2), (3), and (4)

> Wis. Stat. section 343.305(2) Implied Consent. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer under sub.

(3)(a) or (am) or when required to do so under sub. (3)(b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a) or (am), and may designate which of the tests shall be administered first.

Wis. Stat. section 343.305(3) Requested or Required. (a) Upon arrest of a person for violation of s. 346.63(1), (2m) or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63(2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

(am) Prior to arrest, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2) whenever a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person is violation or has violated s. 346.63(7). Compliance with a

request for one type of sample does not bar a subsequent request for a different type of sample. For the purposes of this paragraph, "law enforcement officer" includes inspectors in the performance of duties under s. 110.07(3).

(b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63(1), (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63(2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, controlled substance, controlled substance analog or other drug or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63(7), one or more samples specified in par. (a) or (am) may be administered to the person.

(c) This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

Wis. Stat. section 343.305(4) Information At the time a chemical test specimen is requested under sub. (3) (a) or (am), the person shall be orally informed by the law enforcement officer that:

(a) He or she is deemed to have consented to tests under sub. (2);

(b) If testing is refused, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307(1) and the person's operating privilege would be revoked under this section;
(c) If one or more tests are taken and the results of any test indicate that the person has a prohibited alcohol concentration and was driving or operating a motor vehicle, the person will be subject to penalties, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions, suspensions or revocations within a 10-year period that would be counted under s. 343.307(1); and
(d) After submitting to testing, the person tested has the right to have an additional test made by a person of his or her own choosing.

## STATEMENT OF THE CASE

Petitioner, MICHAEL S. PIDDINGTON, was arrested by a trooper in Dane County, Wisconsin, for drunk driving after he was stopped while driving. He was taken by the trooper to a local hospital, where the trooper read to him an "Informing the Accused form." This form is utilized by law enforcement officers seeking to invoke the provisions of Wisconsin's "Implied Consent law," Wis. Stat. Sec. 343.305. The purpose of this law is both to facilitate the removal of

drunk drivers from the roads and to inform drivers of the rights and penalties applicable to them.

The petitioner has been profoundly deaf since birth. His primary and most effective means of communication is American Sign Language. The petitioner testified as follows:

> Q - Is American Sign Language the primary way that you communicate?
>
> A - Yes. There's much better understanding that way.
>
> Q - And how is that different from reading people's lips?
>
> A - When I was in school, first and second grades, I learned how to speech-read. And it was hard. Then in fourth grade I learned sign language, and it got much better, so I could understand everything in my second language.
>
> Q - Is American Sign Language different from written English in that are the words different and in different order?
>
> A - Oh, yes. They're different languages.
>
> Q - And are you more comfortable with American Sign Language or written English?
>
> A - I'm more comfortable with American Sign Language and regular sign language.

Q - What's the difference between American Sign Language and regular sign language?

A - If someone's profoundly deaf, if someone else signs to them in English word order, they won't understand it. They need to see American Sign Language, which includes facial expressions, body language and everything in order to get the concept.

Q - Are you considered profoundly deaf?

A - Yes. Yes, I was born deaf, profoundly.

Q - How many times do you recall having asked for an interpreter that night?

A - *I asked for it all night.* But I don't think the officer understood me. I also wrote it down on paper, and then I said it with voice too.

(Emphasis added.)

On February 14, 1999, the petitioner was stopped and arrested for OMVWI by a Wisconsin State Patrol trooper, a non hearing-impaired person who does not speak American Sign Language. While still in the vehicle, the petitioner relied on his passenger to communicate to him what the trooper was telling him. After the petitioner exited his vehicle (thus depriving him of contact with the passenger to translate), the trooper attempted to communicate with the petitioner primarily by writing down simple questions and directives.

Because the trooper had difficulty communicating with a hearing-impaired individual several months before, he called in to dispatch to obtain a sign language interpreter. The petitioner asked for an interpreter as well. No interpreter was available. The petitioner's passenger was able to communicate with both the petitioner and the trooper. The trooper was going to have the passenger assist him in communicating with the defendant-respondent. But in the trooper's own words, "I never did follow through with that."

The trooper testified that throughout his contact with the petitioner, he had difficulty communicating with him. In fact, the videotape of the petitioner's arrest shows the trooper having an extremely difficult time trying to convey to the petitioner what the trooper wanted him to do. The videotape shows the petitioner frequently gesturing to the trooper that he didn't understand what was being asked of him. The videotape shows the petitioner and the trooper asking for an interpreter more than once. It also shows the trooper *whistling* at the petitioner in order to get his attention when the petitioner's back was turned to him.

After placing the petitioner under arrest for OMVWI, the trooper placed the petitioner in his squad car with the intention of taking him to the District 1 Headquarters for a breath test. The petitioner, realizing that he was being taken in for a breath test, attempted to request an alternate test - a blood test. The trooper, due to the communication difficulties, misunderstood the petitioner's request and took him to the hospital for a blood test. The petitioner was never given an alternate test.

Once at the hospital, an officer from the City of Madison arrived to assist the trooper with communicating with the defendant-respondent. The officer, by her own

admission, is "not at all" fluent in American Sign Language. The best that she is able to do is "to sign certain sentences and get information across that's pertinent to [her] job at the time."

The officer testified that the Madison Police Department does call in certified American Sign Language Interpreters. She also testified that she would never give a hearing-impaired person their Miranda rights because "I don't feel that I'm a certified interpreter able to do that." The court-appointed sign language interpreter stated that to convey the Miranda warning to someone in American Sign Language "takes about an hour."

The trooper testified that based on the communication difficulty he had with the Petitioner, he "opted not to attempt" even reading the Petitioner the Alcoholic Influence Report—a state form that is far easier to understand than the Informing the Accused form.

In spite of the officer's lack of training, she and the trooper attempted to inform the petitioner of his rights via the Informing the Accused Form. The petitioner testified that he is unable to completely understand information given to him in English, as opposed to American Sign Language.

The Petitioner filed a motion in the trial court to suppress the blood test results. The trial court found "the fact is that the defendant needed an American Sign Language interpreter to really understand the information he was being given with respect to the alternative test, the field sobriety tests, and the Informing the Accused form. (App. C.) Based on that finding of fact, the trial court ordered suppression of the blood test results based on the violation of the Implied Consent law by failing to inform the defendant-respondent of

his rights in a language that he could understand and by denying him his right to an alternate test.

The trial court also ordered suppression of the petitioner's post-arrest statements based on a violation of his Miranda rights.

It is from this order of the trial court granting the petitioner's motion to suppress the blood test results that the State appealed. However, the State limited its argument on appeal to whether the police officer failed to inform petitioner of his rights under the Implied Consent law and did not address the officer's failure to provide petitioner with an alternate test as an additional basis for suppression of his blood test results. The Court of Appeals reversed the holding of the Circuit Court only on the issue of whether Wis. Stat. § 343.305(4) is satisfied by merely orally informing a driver of the information found in the Informing the Accused form, regardless of the language that driver speaks, or the disabilities that he may have. (App. B.) The court did not address the issue regarding the trial court's order granting Petitioner's motion to suppress evidence of his blood test results based on the State's failure to administer an alternate test.

The Court of Appeals concluded that Wis. Stat. § 343.305(4) requires that an officer orally inform a driver of the information found in the Informing the Accused form. The fact that the form is read in a language that the driver cannot understand is irrelevant.

In reversing the judgment of the Circuit Court, the Court of Appeals has construed Wis. Stat. § 343.305(4) in such a manner that it violated the Due Process and Equal

Protection Clauses of the Wisconsin and United States Constitutions.

The petitioner appealed to the Wisconsin Supreme Court. The Wisconsin Supreme Court affirmed the decision of the Court of Appeals, but held that "the specific objective of Wis. Stat. § 343.305(4) is to advise the accused about the nature of the driver's implied consent." (citations omitted.) However, the Wisconsin Supreme Court went on to hold that the methods employed by the officers were reasonable and satisfied the requirements of the law.

## REASONS FOR GRANTING THE WRIT

This is a case where the petitioner is profoundly deaf, and his primary language is American Sign Language. All of this was known to the officer at the time of his arrest. The officer *elected* to forego the opportunity to have the petitioner's passenger accompany them in order to act as an interpreter. The officer read to the petitioner, in English, the Informing the Accused Form. The officer then had another police officer attempt to sign to the petitioner the information in the Informing the Accused form. The petitioner, as he had told the officer throughout his arrest, could not understand the information that the officers were trying to convey.

The State did not claim on appeal that the petitioner could understand what was being told to him. That is because the State cannot. The trial court made a factual determination that the Petitioner could not understand the Informing the Accused Form.

When a person's only form of communication is American Sign Language, he or she must receive the warnings in American Sign Language. American Sign

Language (ASL), as opposed to signed English, is a language completely distinct from English, and is the native language of most hearing-impaired Americans. Signed English is a rendering of ASL signs into English word order and grammar. A deaf person who uses ASL will most likely be unable to communicate fully or successfully in written or signed English. ASL is a language of its own.

If a person cannot understand what is being read to him, he certainly can't make an informed decision. Nor can he convey the decision that he has made. The Informing the Accused form's purpose is to inform the person who is being read the form that he or she is entitled to certain rights and also outlines the consequences of invoking and waiving those rights. The form explains to the person being read the form that he or she is entitled to receive an alternate test if he or she requests one and also has the right to refuse the chemical testing of his blood, breath, or urine. It also explains the consequences of a test result above the statutory limit and the consequences of refusing to submit to the test.

The Wisconsin Supreme Court held that Wis. Stat. 343.305(4) is satisfied by merely trying to one's best to inform a driver of the information found in the Informing the Accused form, regardless of the language that driver speaks, or the disabilities that he may have.

Because disability is not a suspect or quasi-suspect class, the State may treat individuals who are deaf or hearing-impaired differently from individuals who can hear if the distinction is rationally related to a legitimate government purpose. Rewolinski v. Morgan, 896 F. Supp. 879, 881 (E.D. Wis. 1995). However, "the State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."

City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 446 (1985).

One purpose of the Implied Consent law is "to facilitate the taking of tests for intoxication and not to inhibit the ability of the state to remove drunken drivers from the highway." Scales v. State, 64 Wis.2d 485, 494, 219 N.W.2d 286, 292 (1974). An additional purpose of the Implied Consent law is to inform drivers being asked to take a chemical test of the rights and penalties under the Implied Consent law. County of Ozaukee v. Quelle, 198 Wis.2d at 269, 278, 542 N.W.2d 196 (Ct. App. 1995).

Consequently, the Wisconsin Supreme Court's interpretation of the Implied Consent law to conclude that it is a reasonable accommodation to simply try to communicate with a deaf driver puts the government's interest in removing drunk drivers from our highways in direct opposition to another legitimate government interest—to inform the accused of the rights and penalties under the Implied Consent law.

The decision law bears no rational relationship to the state's goal to remove drunk drivers from the highways and to inform the driver's as to their rights and responsibilities under the Implied Consent law. The state is already required to make similar accommodations for deaf and hearing impaired individuals under the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the State Patrol policies and procedures. Contrary to the State's assertion that such accommodation would be overburdensome and would defeat the goal of removing drunk drivers from the road, petitioner is asking the state to do no more than what it is already required to do under these provisions.

Most importantly, providing an interpreter is not the only method of accommodating a deaf or hearing impaired individual in these situations. Simply showing Petitioner a videotape of a certified ASL interpreter signing the Informing the Accused Form would have been sufficient. Moreover, in this particular case, the police officer could have requested that Petitioner's passenger act as an interpreter for him.

The decision of the Wisconsin Supreme Court presumes that the Implied Consent law is the only means available to the State in removing drunk drivers from the road. This ignores the fact that law enforcement may require a lawfully arrested drunk driver to submit to chemical testing absent utilizing the implied consent law. Schmerber v. California, 384 U.S. 757 (1963). This is not an all or nothing proposition. Law enforcement may choose not to utilize the implied consent law and still obtain chemical tests from arrested drunk drivers. Drunk drivers will still be prosecuted and convicted. But when law enforcement seeks to invoke a statutory provision that has as a stated purpose to meaningfully inform accused drunk drivers of their rights and responsibilities as that they can make informed decisions, the equal protection clause requires that it be done in a manner that does not arbitrarily discriminate against deaf drivers.

The decision of the Wisconsin Supreme Court, as it stands, bears no rational relationship to the stated goal of meaningfully informing drunk drivers of the provisions found in the Implied Consent law.

## CONCLUSION

The question is not whether reasonably accommodating deaf drivers will prohibit law enforcement from prosecuting drunk driving, it is whether the State may,

consistent with the equal protection clause, go through the cruel hoax of "informing" a driver in a manner that he cannot adequately understand and say that's good enough. It is not.

Respectfully submitted,

/s/_____

Ralph A. Kalal
*Counsel of Record*
Michele A Tjader
Kalal & Associates
217 S. Hamilton Street
Fifth Floor
Madison, WI 53703-3266
(608) 255-9295

*Counsel for Petitioner*

## APPENDIX A

## IN SUPREME COURT
## STATE OF WISCONSIN

[Filed March 22, 2001]

No. 99-1250-CR

State of Wisconsin,
*Plaintiff-Appellant*,

v.

Michael S. Piddington,
*Defendant-Respondent-Petitioner*.

REVIEW of a decision of the Court of Appeals. *Affirmed*.

¶1 N. PATRICK CROOKS, J. Michael Piddington seeks review of a published court of appeals decision that reversed a circuit court order which had suppressed the test results of Piddington's blood for alcohol. State v. Piddington, 2000 WI App 44, 233 Wis. 2d 257, 607 N.W.2d 303. Piddington was tested after he was arrested for operating a motor vehicle while under the influence of an intoxicant (OWI). The circuit court had concluded that Piddington, who has been profoundly deaf since birth, needed an American Sign Language interpreter to fully understand

the field sobriety tests and the information that he was to be given pursuant to Wisconsin's implied consent law, Wis. Stat. §343.305(4) (1995-96).[1] The court of appeals reversed, concluding that the law enforcement officer need only "orally inform" Piddington of the required information.[2] Piddington,

---

[1]"Implied consent" refers to the principle that a driver "is deemed to have given consent" to chemical tests for alcohol as a condition of operating a motor vehicle in Wisconsin. Wis. Stat. §343.305(2) (1995-96).

All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise noted.

[2]The version of Wis. Stat. §343.305(4)--the 1995-96 version--that was in effect at the time that Piddington was arrested reads as follows:

(4) Information. At the time a chemical test specimen is requested under sub. (3) (a) or (am), the person shall be orally informed by the law enforcement officer that:
(a) He or she is deemed to have consented to tests under sub. (2);
(b) If testing is refused, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307 (1) and the person's operating privilege will be revoked under this section;
(c) If one or more tests are taken and the results of any test indicate that the person has a prohibited alcohol concentration and was driving or operating a motor vehicle, the person will be subject to penalties, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions,

2000 WI App 44 at ¶12. We disagree with the court of appeals' approach regarding the implied consent warnings contained in §343.305(4).[3] We hold that §343.305(4) requires the arresting officer under the circumstances facing him or her at the time of the arrest, to utilize those methods which were reasonable, and would reasonably convey the implied consent warnings. In determining whether the arresting officer has used reasonable methods which would reasonably convey the necessary information in light of the pertinent circumstances, the focus rests upon the conduct of the officer. We thus agree with that part of the circuit court's findings that "the attempts of law enforcement to communicate with the defendant were reasonable under all the circumstances, perhaps even exemplary . . . ." (R. at 28:1-2.) The law enforcement officers here used reasonable methods to convey the required implied consent warnings, and, accordingly, we

---

suspensions or revocations within a 10-year period that would be counted under s. 343.307 (1); and
(d) After submitting to testing, the person tested has the right to have an additional test made by a person of his or her own choosing.

[3]Herein, the term "implied consent warnings" refers to the information the legislature has directed law enforcement to convey to drivers accused of OWI pursuant to Wis. Stat. §343.305(4). That information includes: (a) a brief explanation of the nature of implied consent; (b) a warning about the consequences of refusing to submit to a chemical test to determine alcohol concentration in the blood; (c) a warning about the consequences of a prohibited concentration of alcohol in the blood; and (d) the right to request an alternative test.

affirm the court of appeals. The test results should not have been suppressed.

I

¶2 The facts are largely undisputed. On February 14, 1998, at approximately 1:00 a.m., a Wisconsin State Patrol trooper patrolling U.S. Highway 51 in Madison observed in front of him a pickup truck speeding and drifting from lane to lane. When the pickup truck made an abrupt swerve, the trooper stopped him. Piddington, who has been severely deaf since birth, and his passenger indicated to the trooper that Piddington was deaf. The trooper told Piddington through the passenger (acting as an interpreter) that he was going to have Piddington perform field sobriety tests after he checked Piddington's license.

¶3 When the trooper returned, the passenger told the trooper that Piddington wanted to know why he had been stopped. The trooper wrote the reason on his pad, and, for the remainder of the stop, used notes, gestures and some speaking to communicate with Piddington.[4] The trooper had contacted dispatch to track down a law enforcement officer who knew sign language, but was informed that no one was available. Piddington had asked both at the beginning of the stop, and also later during the stop, for a sign language interpreter, and the trooper told him that no one was yet available.

---

[4]The trooper indicated that he had intended to have the passenger continue to interpret, but he had the passenger return to the car when he found that he did not need the passenger to interpret in order to communicate with Piddington.

Piddington, however, had also indicated that he could speech-read, colloquially known as "reading lips."

¶4 Piddington admitted that he had been drinking. The trooper saw that Piddington's eyes were glassy and that there was a strong odor of alcohol about him. The trooper had Piddington perform sobriety tests, including the horizontal gaze nystagamus (follow the pen tip with the eyes) test and the walk-and-turn test. The trooper instructed Piddington through oral and written instructions, as well as demonstrating the tests for him.

¶5 Based upon Piddington's performance in these two tests, the trooper concluded that he was impaired, and had him perform a preliminary breath test to determine Piddington's blood alcohol concentration. Again, the trooper gave both written instructions and a demonstration. The result was 0.27. The trooper then placed Piddington under arrest for OWI. The trooper handcuffed Piddington with his hands in front so that he could continue to write notes, and sign, should an officer with sign language capability became available. As the trooper was preparing to take Piddington to State Patrol headquarters for a breathalyzer test, he learned that a Madison police officer who had some working knowledge of sign language had become available, and arranged to meet her at Patrol headquarters. En route to headquarters Piddington requested, through a note, to have a blood test. Consequently, the trooper took him to Meriter Hospital, and met the Madison police officer there.

¶6 The officer was not a certified American Sign Language (ASL) interpreter, but knew some sign language, and she and Piddington communicated by sign and orally.

Piddington was given an Informing the Accused form,[5] and

---

[5]The Informing the Accused form used here was generated by the Wisconsin Department of Transportation and based upon §343.305(4). It reads in pertinent part as follows:

> When a Law Enforcement Officer requests that you submit to a chemical test, pursuant to Wisconsin's Implied Consent Law, the officer is required to inform you of the following:
>
> Section A
> (applies to everyone)
>
> 1. You are deemed under Wisconsin's Implied Consent Law to have consented to chemical testing of your breath, blood or urine at this Law Enforcement Agency's expense. The purpose of testing is to determine the presence or quantity of alcohol or other drugs in your blood or breath.
>
> 2. If you refuse to submit to any such tests, your operating privilege will be revoked.
>
> 3. After submitting to chemical testing, you may request the alternative test that this law enforcement agency is prepared to administer at its expense or you may request a reasonable opportunity to have any qualified person of your choice administer a chemical test at your expense.
>
> 4. If you take one or more chemical tests and the result of any test indicates you have a prohibited alcohol concentration, your operating privilege will be administratively suspended in addition to other

told to read it and initial each paragraph only if he understood it. (Piddington had told the Madison police officer that he graduated from high school and could read and write.) He read it and initialed to the left of each applicable paragraph. The State Patrol trooper also attempted to read the form aloud to Piddington, but Piddington responded by indicating that he could not read his lips.[6] The Madison police officer read it to Piddington, instead, without objection. The officer told Piddington to indicate whether or not he would submit to a blood test and initial his response. Piddington indicated that he would submit to a blood test. The result was 0.206.

¶7 Piddington was subsequently charged with OWI in violation of Wis. Stat. §346.63(1)(a) and with having a prohibited alcohol concentration in violation of §346.63(1)(b).

---

penalties which may be imposed.

5. If you have a prohibited alcohol concentration or you refuse to submit to chemical testing and you have two or more prior suspensions, revocations or convictions within a 10 year period and after January 1, 1988, which would be counted under s. 343.307(1) Wis. Stats., a motor vehicle owned by you may be equipped with an ignition interlock device, immobilized, or seized and forfeited.

[6]Piddington had indicated earlier in the stop that he could read the trooper's lips. The trooper subsequently testified that Piddington had become uncooperative with him when they reached the hospital.

¶8 Piddington made a number of motions to suppress. At the suppression hearing, he testified that he has difficulty speech-reading, and that his primary form of communicating is ASL. He also testified that he needed an ASL interpreter to fully understand both the trooper's instructions for the sobriety test and the Informing the Accused form.

¶9 The State Patrol trooper testified that there were times when it was difficult to communicate with Piddington, but that he made sure that Piddington understood what the trooper was communicating and would not proceed until Piddington indicated that he understood. The trooper also admitted that he had been more lenient in evaluating Piddington's performance on the sobriety tests than he would have been with hearing drivers given the difficulty communicating.

¶10 Dane County Circuit Court Judge Daniel R. Moeser found that there was probable cause for Piddington's arrest, but granted the motions to suppress the blood alcohol test and statements Piddington made after his arrest. The circuit court found that "the attempts of law enforcement to communicate with the defendant were reasonable under all the circumstances, perhaps even exemplary." (R. at 28:1-2.) However, according to the court, those attempts were nonetheless insufficient to meet the State's burden to show that Piddington had been informed regarding his right to an alternative test and other information contained in the Informing the Accused form. According to the circuit court, "the defendant needed an [ASL] interpreter to really understand the information he was being given . . . ." (R. at 28:2.)

¶11 The State appealed, and the court of appeals reversed. Piddington, 2000 WI App 44. The court of appeals concluded that Wis. Stat. §343.305(4) "requires nothing more than that an arresting officer 'orally inform' an [OWI] arrestee of the required information." Id. at ¶12. In granting Piddington's petition for review, we additionally ordered the parties to address the equal protection issue raised in an amicus brief filed in this case by the University of Wisconsin Law School Frank J. Remington Center.

II

¶12 Piddington's objections to the court of appeals' decision are based in both statutory and constitutional interpretations. Piddington contends that the law enforcement officer violated Wis. Stat. §343.305(4) because the officer did not provide him with an ASL interpreter. Piddington also contends that the absence of an ASL interpreter violated the constitutional principles of due process and equal protection.[7] Alternatively, according to Piddington, the circuit court correctly suppressed his blood test results because he asked for, and did not receive, an alternate test.

---

[7]Connected to his equal protection argument is Piddington's contention that the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act, and State Patrol policies mandate reasonable accommodation of hearing impaired persons. Consequently, according to Piddington, requiring the State to provide an ASL interpreter here would not further burden the State beyond what it is already required to provide.

¶13 What Wis. Stat. §343.305(4) required of the State Patrol trooper is a question of statutory interpretation. "Application of the implied consent statute to an undisputed set of facts, like any statutory construction, is a question of law that this court reviews de novo." State v. Reitter, 227 Wis. 2d 213, 223, 595 N.W.2d 646 (1999). Similarly, reconciling constitutional considerations of due process and equal protection with the requirements of the implied consent statute involve questions of law, which we also review de novo. Id.

A

¶14 We address each of Piddington's contentions in turn, starting with considering whether the State Patrol trooper complied with, or violated, the requirements of Wis. Stat. §343.305(4). The focal point of all statutory interpretation is discerning the intent of the legislature. Milwaukee County v. DILHR, 80 Wis. 2d 445, 451, 259 N.W.2d 118 (1977). In searching for legislative intent, we start with the language of the statute. Kelley Co. v. Marquardt, 172 Wis. 2d 234, 247, 493 N.W.2d 68 (1992). If the plain meaning of the statute is self-evident, we look no further. UFE, Inc. v. LIRC, 201 Wis. 2d 274, 281, 548 N.W.2d 57 (1996). Where a statute is ambiguous, that is, "reasonable minds could differ as to its meaning," the court examines further into the scope, history, context, subject matter and purpose of the statute in question. Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 662, 539 N.W.2d 98 (1995); See also UFE, Inc., 201 Wis. 2d at 282.

¶15 The term "informed," as in "the person [who is requested to submit to a chemical test] shall be orally

informed by the law enforcement officer," in the introduction of Wis. Stat. §343.305(4) is capable of two different meanings. The court of appeals interpreted §343.305(4) to mean that "an arresting officer [need only] 'orally inform[]' an arrestee of the correct required information." Piddington, 2000 WI App 44, ¶15 (footnote omitted). The State agrees with that interpretation here. Piddington takes the opposite approach, contending that §343.305(4)'s mandate to "inform" requires more than merely reading the implied consent warnings to a deaf driver, who would be unlikely, based on such an approach, to comprehend them. According to Piddington, in this case, law enforcement could comply with §343.305(4) only by providing an ASL interpreter.

¶16 Neither the State's nor Piddington's interpretation of Wis. Stat. §343.305(4) is unreasonable. Where "reasonable minds could differ as to [the] meaning" of a statute, that statute is ambiguous. Harnischfeger, 196 Wis. 2d at 662. Here, as in State v. Zielke, 137 Wis. 2d 39, 45, 403 N.W.2d 427 (1987), where the State argued that §343.305 did not provide the only means for police to obtain admissible evidence of blood alcohol concentration and Zielke argued that it did, "[t]he opposing interpretations of the implied consent law advanced by the parties demonstrate the ambiguity of the statute." Because precisely what the language of §343.305(4) requires of law enforcement is ambiguous, we look beyond the text to its scope, history, context, subject matter, and purpose to determine the legislature's intent. UFE, Inc., 201 Wis. 2d at 282. The "court . . . presume[s] the legislature intended an interpretation that advances the purposes of the statute." Zielke, 137 Wis. 2d at 46.

¶17 The purpose behind the implied consent law is to combat drunk driving by "facilit[ating] the gathering of evidence against drunk drivers." State v. Neitzel, 95 Wis. 2d 191, 203, 289 N.W.2d 828 (1980). "With this intent in mind we proceed to an interpretation of the statute considering the . . . object of the statute, mindful that the court must liberally construe the law to effectuate the legislature's intent." Zielke, 137 Wis. 2d at 47. The specific objective of Wis. Stat. §343.305(4) within the implied consent statutory scheme is to "advise the accused about the nature of the driver's implied consent." Reitter, 227 Wis. 2d at 225. Section 343.305(4) warns drivers of the consequences of test results indicating an alcohol concentration of greater than 0.10 as well as the consequences of refusing to submit to testing. State v. Muente, 159 Wis. 2d 279, 281-82, 464 N.W.2d 230 (Ct. App. 1990); see also §340.01 (46m)(2). In addition, §343.305(4)(d) notifies the driver of the right to request a second, alternative test to the one requested by the arresting officer. "[T]he legislation requires that an apprehended driver be advised of the absolute right to a second test. This is a legislatively conferred right which we will strictly protect." State v. Walstad, 119 Wis. 2d 483, 527, 351 N.W.2d 469 (1984) (emphasis added).

¶18 We turn to how to best ensure that law enforcement officers comply with the legislature's mandate requiring that apprehended drivers are informed about their rights and responsibilities under the implied consent law. Previous decisions have addressed the sufficiency of the implied consent warnings given to the accused drivers. See, e.g., Reitter, 227 Wis. 2d 213, 595 N.W.2d 646; Village of Oregon v. Bryant, 188 Wis. 2d 680, 524 N.W.2d 635 (1994);

State v. Crandall, 133 Wis. 2d 251, 394 N.W.2d 905 (1986).[8] None of these decisions addressed the manner in which the law enforcement officer conveyed the information, or whether that method reasonably conveyed that information. The instant case implicates more than "what must be told persons when requesting them to take a breathalyzer test." Crandall, 133 Wis. 2d at 259 (emphasis added). Instead, this case implicates how persons are given the implied consent warnings, that is, the methods used to convey those warnings. Nonetheless, the previous decisions are "founded on a simple premise: the implied consent warnings are designed to inform drivers of the rights and penalties applicable to them." County of Ozaukee v. Quelle, 198 Wis. 2d 269, 279, 542 N.W.2d 196 (Ct. App. 1995). This same principle applies here.

¶19 The Quelle court concluded that there was a functional similarity between the statutory mandate regarding implied consent warnings and the constitutional mandate regarding Miranda rights. Quelle, 198 Wis. 2d at 277-78. Insofar as the objective of both is to inform the accused, "the warnings provided drivers under the implied consent law are analogous to those employed in Miranda-type cases." Id. at

---

[8]This court has also considered the sufficiency of the Informing the Accused form, a form developed by the Wisconsin Department of Transportation to assist law enforcement officers in giving accused drivers the implied consent warnings. See Village of Oregon v. Bryant, 188 Wis. 2d 680, 692, 524 N.W.2d 635 (1994). We have found that the Informing the Accused forms, including the form used here, "accurately informed" or "adequately alert[ed]" accused drivers about "the testing process and the consequences of refusal," State v. Reitter, 227 Wis. 2d 213, 240, 595 N.W.2d 646 (1999) (citing Bryant, 188 Wis. 2d at 692).

276.

¶20 In an analogous situation, where a law enforcement officer gave an arrestee Miranda warnings in Spanish, this court indicated that, in determining whether the arrestee was properly advised of his Miranda rights, the pertinent "inquiry is whether the warnings reasonably convey the Miranda rights." State v. Santiago, 206 Wis. 2d 3, 12 n.6, 556 N.W.2d 687 (1996) (citations omitted).[9] Yet, even though there is a functional similarity between the implied consent and Miranda warnings, there are significant distinctions that dictate that an accused driver need not comprehend the implied consent warnings for the warnings to have been reasonably conveyed.[10] In short, "Miranda rules do not apply

---

[9]In State v. Santiago, 206 Wis. 2d 3, 21, 556 N.W.2d 687 (1996), we concluded that the record was incomplete, and thus we could not determine whether the defendant had been "properly advised of" or "knowingly and intelligently waive[d] the Miranda rights" because of the foreign-language Miranda warnings given.

[10]First, Miranda warnings are based upon the United States Constitution (see Dickerson v. United States, 530 U.S. 428 (2000); the implied consent warnings are based upon Wisconsin statutes. Second, the purpose of Miranda warnings is to ensure that the arrestee comprehends his or her constitutional rights so that those rights can be knowingly and intelligently waived. Santiago, 206 Wis. 2d at 18-19. The purpose of the implied consent warnings is to inform the accused driver about implied consent and alert him or her to the statutory right to request an alternative test. Reitter, 227 Wis. 2d at 225. The right to request an alternative test is not a right that must be waived before the officer proceeds with testing; rather, the right to request a second test arises after the requested test has been completed. Wis. Stat. §343.305(4)(d).

because [the] request to submit to a chemical test does not implicate testimonial utterances." Reitter, 227 Wis. 2d at 225. Consequently, there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical testing proceeds, and no concomitant need for the accused driver to understand the warnings. See id.

¶21 In consideration of the differences between the implied consent warnings and the Miranda warnings, the determination of whether the law enforcement officer reasonably conveyed the implied consent warnings is based upon the objective conduct of that officer, rather than upon the comprehension of the accused driver. This approach ensures that the driver cannot subsequently raise a defense of "subjective confusion," that is, whether the implied consent warnings were sufficiently administered must not depend upon the perception of the accused driver. Reitter, 227 Wis. 2d at 229; Quelle, 198 Wis. 2d at 280-81. Whether the implied consent warnings have been reasonably conveyed is not a subjective test; it does not "require assessing the driver's perception of the information delivered to him or her." Quelle, 198 Wis. 2d at 280 (emphasis in original).

¶22 Despite the significant distinction between Miranda and implied consent warnings, they share the common purpose of informing the accused. Considering that similarity, we conclude that whether law enforcement officers have complied with Wis. Stat. §343.305(4) turns on whether they have used reasonable methods which would reasonably convey the warnings and rights in §343.305(4). As in Miranda-type cases, the State has the burden of proof of showing, by a preponderance of the evidence, that the methods used would reasonably convey the implied consent

warnings. See Santiago, 206 Wis. 2d at 19.[11] Also, in the implied consent setting, as well as in the Miranda setting, the onus is upon the law enforcement officer to reasonably convey the implied consent warnings. See id.

¶23 Whether the implied consent warnings given sufficiently comply with Wis. Stat. §343.305(4) depends upon the circumstances at the time of the arrest; correspondingly, whether the methods used were reasonable and would reasonably convey those warnings also depends upon the circumstances facing the arresting officer. See, e.g., State v. Geraldson, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).[12] The purpose of Wis. Stat. §343.305(4) to inform an accused driver, is fulfilled, rather than undermined, if the law enforcement officer must use reasonable methods that

---

[11]The initial burden of showing that law enforcement officers used those methods which would reasonably convey the implied consent warnings rests with the State. Then, the burden shifts to the accused driver to show "one, that the officer misstated the warnings, or otherwise misinformed the driver, and two, that the officer's misconduct impacted his or her ability to make the choice available under the law." County of Ozaukee v. Quelle, 198 Wis. 2d 269, 278, 542 N.W.2d 196 (Ct. App. 1995).

[12]In Geraldson, the implied consent warnings given were insufficient because the officer failed to give the accused driver those warnings that applied to the driver who held a commercial vehicle license. State v. Geraldson, 176 Wis. 2d 487, 495, 500 N.W.2d 415 (Ct. App. 1993). The officer failed to take into account a known, pertinent circumstance that affected the giving of the implied consent warnings, namely, the existence of the commercial vehicle license.

reasonably convey the implied consent warnings, in consideration of circumstances facing him or her. This interpretation ensures that an accused driver is properly advised under the implied consent law, without raising the specter of subjective confusion.[13] Accordingly, we find that the legislature intended that law enforcement officers inform accused drivers of the implied consent warnings, and that duty is met by using those methods which are reasonable and reasonably convey those warnings under the circumstances at the time of the arrest.

¶24 The legislative history of Wis. Stat. §343.305(4) bolsters the conclusion that the legislature intended that law enforcement officers are to convey the implied consent warnings using those methods which reasonably assure access to those warnings. In 1985, the pertinent language read "shall inform." In 1987, the legislature substantially revised Wis. Stat. §343.305, and created subsection (4). 1987 Wis. Act 3, §29. Subsection (4) was originally drafted to read that "at the time a chemical test specimen is requested . . . the person shall be informed." The Senate amended this phrase to substitute "shall be orally informed by the law enforcement officer" for "shall be informed," the language at issue here. Senate Amendment 2 to 1987 A.B. 30.

---

[13]Our holding here does not affect the exception to the implied consent warning mandate where the driver is unconscious or "otherwise not capable of withdrawing consent." Wis. Stat. §343.305(3)(b). "A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection . . . ." Id.

¶25 In 1994, this court suggested that Informing the Accused forms "used by the Department of Transportation could be simplified." Bryant, 188 Wis. 2d at 692. Given that "the recipient of the information, has been determined, to a degree of probable cause, to be under the influence of alcohol," "reasonableness under the circumstances dictates that the directions and warnings to the accused be as simple and straightforward as possible." Id. at 693. The Department of Transportation concurred with this court's observation about the implied consent warnings.

> The complex instructions that are statutorily required has led to the development of a fairly complex form that is read to each accused drunk driver . . . . The current Informing the Accused form balances court . . . decisions in an attempt to provide the statutorily required disclosures in a straight-forward manner. Nonetheless, it is not an easy document for sober people to understand, much less a person who is intoxicated, such as a person arrested for OWI.

Memorandum from John J. Sobotik, Assistant General Counsel, Wisconsin Department of Transportation, to Rep. John La Fave, dated November 14, 1995, Re: Informing the Accused Form.[14]

---

[14]Even though the legislature may have considered that the implied consent warning forms may not be easy for an intoxicated person to understand, there is no indication that the legislature intended that the mental processes of an intoxicated driver are to be taken into account in determining compliance with Wis. Stat.

¶26 The year after Bryant, both the executive and the legislative branches took steps to simplify the implied consent warnings. "The Governor's 1995 Task Force on OAR/OWI strongly recommended that the form be rewritten using simple English." Memorandum from Rep. John La Fave to Don Salm, dated February 6, 1997, Re: "Informing the Accused" workgroup (emphasis in original). In February 1997, Representative La Fave organized an informal committee to examine the Informing the Accused form. Id. In August 1997, Representative La Fave and others introduced legislation that set forth the implied consent warnings in plain and direct language.[15]

---

§343.305(4). We agree with the court of appeals that "since the statute requires the information to be provided only to persons who are probably intoxicated, it is unlikely that the legislature intended a persons' understanding or comprehension of the information to be determinative of compliance with the statute." State v. Piddington, 2000 WI App 44, ¶15, 233 Wis. 2d 257, 607 N.W.2d 303. However, the issue at hand is whether an officer has to give deaf persons the same opportunity to understand the implied consent warnings as a hearing, English-speaking persons, regardless of the extent to which their intoxication may interfere with their mental processes. Reasonable methods which reasonably convey the implied consent warnings afford that opportunity.

[15]The amended version reads as follows:

> INFORMATION. At the time that a chemical test specimen is requested under sub. (3) (a) or (am), the law enforcement officer shall read the following to the person from whom the test specimen is requested:

"You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified."

¶27 That legislation, 1997 Assembly Bill 467, was enacted as 1997 Wisconsin Act 107 on April 14, 1998, effective August 1, 1998, after Piddington's arrest. 1997 Wis. Act 107, §9. Even though the revision is not applicable here, the changes elucidate the legislature's intent. Evident in the amendment to Wis. Stat. §343.305(4) is the legislature's intent to place the onus upon the law enforcement officer to convey the implied consent warnings. That is, "the law enforcement officer shall read the following to the person from whom the test specimen is requested . . . [etc.]." Wis. Stat. §343.305(4) (1997-98). Also evident is the intent to simplify the warnings so as to facilitate the officers' delivery of them. Just as the text should facilitate the driver's receipt of the warnings, the methods employed to deliver those warnings should not unreasonably obstruct their comprehension. Indeed, by simplifying the implied consent warnings, the legislature indicated that every reasonable means should be employed to ensure that the warnings are being conveyed--whether that requires that the law enforcement officer reads the warnings aloud, or uses another method.[16]

¶28 That a law enforcement officer must use reasonable methods to convey the implied consent warnings

---

[16]Accordingly, we find no significance in the legislature's amendment of Wis. Stat. §343.305(4) to replace "shall be orally informed" with "shall read." That amendment changes the verb tense from the passive to the active voice. The more significant revision is the clear and direct language of the implied consent warnings, indicating the legislature's intent that the text should not unreasonably hinder the law enforcement officer's dispatch of the warnings.

does not mean the officer must take extraordinary, or even impracticable measures to convey the implied consent warnings. Reasonableness under the circumstances also requires consideration of the fact that alcohol dissipates from the blood over time, particularly after the subject has stopped drinking. State v. Bohling, 173 Wis. 2d 529, 533, 494 N.W.2d 399 (1993); see also Wis. Stat. §885.235 (blood test result is automatically admissible if blood is taken within three (3) hours of the stop). The State cannot be expected to wait indefinitely to obtain an interpreter and risk losing evidence of intoxication. Such would defeat, rather than advance, the intent of the implied consent law "to facilitate the gathering of evidence against drunk drivers in order to remove them from the state's highway." Zielke, 137 Wis. 2d at 46. The approach we adopt today only ensures that barriers which may affect the arresting officer's ability to reasonably convey the implied consent warnings to an accused driver, such as one with impaired hearing, are taken into account and accommodated as much as is reasonable under the circumstances.[17]

---

[17]As we have indicated before, we do not require that a Miranda-like card be developed. Bryant, 188 Wis. 2d at 692. However, as we indicated in Bryant, we encourage law enforcement and/or the Department of Transportation officials to adopt methods that would assist officers in reasonably conveying the implied consent warnings in a variety of circumstances they are likely to face. The legislature assisted by simplifying the text, but, as the instant case illustrates, the methods used to convey the warnings must also be reasonable. Such reasonable methods could include videos that show the warnings in sign language. Similarly, translations, either by card for those fluent in the language to use or, again, videos, could be prepared in languages other than English

¶29 We now turn to whether, under the circumstances that were presented to the State Patrol trooper here on February 14, 1998, the trooper used those methods which would reasonably convey the implied consent warnings to Piddington. The trooper first communicated with Piddington using the passenger as an interpreter. When Piddington indicated that he could read and write notes as well as speech-read, the trooper communicated directly with Piddington by speaking to him, and through notes passed back and forth.[18] A review of the notes between Piddington and the trooper reveals that Piddington was aware of what was happening, and his questions to the trooper in particular, reflected his understanding. For example, Piddington wrote a note that "I was just speeding." At another point, he wrote "But did I pass the test as I walked?"

¶30 During the stop, it was evident that Piddington sufficiently understood what was communicated to him. Piddington attempted to perform the sobriety tests and, as shown by the patrol car video-tape of the stop, he failed them due to his intoxication, not because he did not understand how to perform the test. Also, Piddington requested a blood test as the State Patrol trooper was preparing to take him to the state

---

that law enforcement officers encounter, such as Spanish and Hmong.

[18]Foregoing use of the passenger as an interpreter was reasonable. Where alternative methods of conveying the necessary information were available, the trooper should not have had to rely upon Piddington's companion, who might not have been an objective interpreter under the circumstances.

patrol headquarters for a breath test, exhibiting further his comprehension of what was happening to him.

¶31 Despite his ability to communicate with Piddington, the trooper made reasonable efforts to obtain a sign-language interpreter. He contacted his dispatch, who informed him that no one was available. But an officer who was conversational in sign language was located at the point in time when it was most helpful; namely, to convey the implied consent warnings. The Madison police officer met the trooper and Piddington at the hospital, and was informed by Piddington that he could speech-read and read, and had graduated from high school. The trooper had attempted to read the warnings using an Informing the Accused form until Piddington told him that he could not follow his lips by speech-reading. The Madison police officer then read the warnings to Piddington without objection. Piddington himself read them, and without asking for clarification or explanation, initialed each paragraph, as instructed, in order to show his understanding.

¶32 Even though the Madison police officer was not an ASL-certified sign language interpreter, through a combined effort of using her somewhat limited abilities at sign language, speech-reading and the reading of the Informing the Accused form, the implied consent warnings were reasonably conveyed to Piddington through reasonable methods. There was no need, as Piddington contends, for an ASL-certified interpreter in this instance. As the circuit court determined, the trooper performed a commendable job with his various attempts at accommodating and communicating with

Piddington.[19]

¶33 The implied consent law requires only substantial compliance. "[S]ubstantial compliance will suffice if it is 'actual compliance in respect to the substance essential to every reasonable objective of the statute.'" State v. Muente, 159 Wis. 2d 279, 281, 464 N.W.2d 230 (quoting Midwest Mut. Ins. Co. v. Nicolazzi, 138 Wis. 2d 192, 200, 405 N.W.2d 732 (Ct. App. 1987)). The reasonable objective of Wis. Stat. §343.305(4) is to inform the accused of the implied consent warnings. It follows that the essential aspect of that objective is to use those methods reasonably calculated to convey the information given the circumstances. Given that the State Patrol trooper's conduct shows that reasonable methods to convey the implied consent warnings to Piddington were used, there was substantial compliance with §343.305(4) here.

¶34 However, assuming, arguendo, that the trooper did not use reasonable methods to reasonably convey the implied consent warnings and thus violated Wis. Stat. §343.305(4), Piddington would not necessarily be entitled to suppression of the test results.

---

[19]The circuit court found that Piddington could not "really understand" the implied consent warnings, indicating that the court was analyzing whether the trooper had complied with Wis. Stat. §343.305(4) by viewing the incident from Piddington's perspective. Whether Piddington subjectively understood the warnings is irrelevant. Rather, whether there was compliance with §343.305 remains focused upon the objective conduct of the law enforcement officer or officers involved.

> [E]ven though failure to advise the defendant as provided by the implied consent law affects the State's position in a civil refusal proceeding and results in the loss of certain evidentiary benefits, e.g., automatic admissibility of results and use of the fact of refusal, nothing in the statute or its history permits the conclusion that failure to comply with sec. 343.305(3)(a), Stats. [now §343.305(4)], prevents the admissibility of legally obtained chemical test evidence in the separate and distinct criminal prosecution for offenses involving intoxicated use of a vehicle.

Zielke, 137 Wis. 2d at 51.[20] Apart from suppression, Piddington could have pursued an order prohibiting the automatic admissibility of the blood test result pursuant to §885.235. Instead of relying upon the automatic admissibility

---

[20]Zielke, driving while intoxicated, caused an accident resulting in the death of two persons. The circuit court found that there were exigent circumstances that justified taking Zielke's blood for alcohol testing, and that he consented as well. Because the police officer did not give Zielke the required implied consent warnings, the circuit court suppressed the test results, and the court of appeals affirmed. This court reversed the decision of the court of appeals, holding, in part, that violation of the implied consent law did not compel suppression of the blood test results. We also concluded that where there are exigent circumstances or the accused driver consents to a blood test, a warrantless blood seizure is constitutionally permissible. State v. Zielke, 137 Wis. 2d 39, 54, 403 N.W.2d 427 (1987).

of the blood test, the State would have to establish the admissibility of the blood test, including establishing a foundation.

¶35 There are also other remedies that an accused driver may pursue where there is evidence that the methods used were not reasonable and would not have reasonably conveyed the implied consent warnings. For example, under Wis. Stat. §343.305(8), a driver could challenge the automatic administrative suspension of his or her license. One of the issues that the hearing examiner may consider is "whether the person was informed of the options regarding tests under this section as required under sub. (4)." Wis. Stat. §343.305(8)(b)2.b. Similarly, an accused driver could challenge automatic revocation of his or her license for refusing to submit to a chemical test under Wis. Stat. §343.305(9). As an initial matter, the notice of the intent to revoke must include "information . . . [t]hat the officer complied with sub. (4)." Wis. Stat. §343.305(9)(a)2. Then, one of the issues for a hearing on the revocation is "whether the officer complied with sub. (4)." Wis. Stat. §343.305(9)(a)5.b. Both the administrative suspension and refusal procedure allow accused drivers to maintain their driving privileges while the review is pending. Wis. Stat. §343.305(8)(a), (10)(a).

¶36 We conclude that Wis. Stat. §343.305(4) requires that a law enforcement officer use those reasonable methods which would reasonably convey, in consideration of the circumstances at the time of the arrest, the implied consent warnings therein. Here, the state trooper employed reasonable methods, in consideration of Piddington's hearing impairment, to reasonably convey the implied consent

warnings to Piddington. The trooper complied with §343.305(4), and, accordingly, there was no violation of §343.305(4) that would warrant suppression of Piddington's blood test results.

B

¶37 Piddington makes a number of other challenges to the court of appeals' decision based upon alleged violations of constitutional and policy considerations. For example, Piddington contends that the court of appeals' approach--law enforcement need only read the implied consent warnings--violates the constitutional guarantee of due process.[21]

¶38 In Bryant, this court concluded that the provisions of the implied consent statute did not violate due process. Bryant, 188 Wis. 2d at 692, 524 N.W.2d 635. There, the defendants claimed that they were "either misinformed or the statutes were hopelessly confused and contradictory." Id. We held to the contrary, that "[t]he process guaranteed by the statutes is an appropriate one and the statutory protections and admonitions were afforded each of the defendants in the cases on review." Id.

¶39 This court has also found that the implied consent warnings, given by way of various Informing the Accused forms, do not violate due process. See, e.g., Bryant, 188 Wis. 2d at 692, 524 N.W.2d 635; Crandall, 133 Wis. 2d

---

[21]According to Article I, Section 8(1) of the Wisconsin Constitution, "no person may be held to answer for a criminal offense without due process of law . . . ."

at 259, 394 N.W.2d 905. The forms used to convey the implied consent warnings do not violate due process because they "adequately alert[] accused drivers to the testing process and the consequences of refusal." Reitter, 227 Wis. 2d at 240 (citing Bryant, 188 Wis. 2d at 692); see also Crandall, 133 Wis. 2d at 259 (the Informing the Accused form "adequately informed [the defendant] of her rights and responsibilities under the Wisconsin implied consent law").

¶40 In Crandall, Bryant, and Reitter, there were no objections to the reasonableness or the adequacy of merely reading the implied consent warnings to the defendants, who apparently were not deaf and understood English. The issue here is not whether the text of the implied consent warnings violates due process, but whether the methods used to convey the warnings violated due process. However, we have already determined herein that Wis. Stat. §343.305(4) is complied with where reasonable methods are used to reasonably convey the implied consent warnings. Accordingly, here, as in Bryant, so long as the process guaranteed by the statute has been afforded the accused driver, whether that process relates to the text of the warnings or the manner in which they are conveyed, there is no due process violation.

¶41 Piddington received all the process due under Wis. Stat. §343.305(4). With the assistance of the Madison police officer, the State Patrol trooper, as §343.305(4) requires, used those reasonable methods which, under the circumstances at the time of the arrest, would reasonably convey the implied consent warnings. Accordingly, there was no violation of due process.

¶42 Piddington also contends that the court of appeals' approach violates the constitutional guarantee of equal protection under the law because hearing persons will have the opportunity to understand the implied consent warnings read to them, and deaf persons will not.[22] "To withstand equal- protection review, classifications which distinguish between deaf persons and others need only be rationally related to a legitimate government interest."

---

[22]Equal protection is guaranteed by Article I, Section 1 of the Wisconsin Constitution, and the Fourteenth Amendment to the United States Constitution. Article I, Section 1 of the Wisconsin Constitution states:

> All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

The Equal Protection Clause of the Fourteenth Amendment requires that no State shall "deny to any person within its jurisdiction the equal protection of the laws." We treat the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the Wisconsin Constitution as equivalent because "there is no substantial difference between" them. Jackson v. Benson, 218 Wis. 2d 835, 900-01 n.28, 578 N.W.2d 602 (1998) (quoting State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 49-50, 132 N.W.2d 249 (1965)). As such, we refer to cases analyzing the Fourteenth Amendment or Article I, Section 1 of the Wisconsin Constitution.

Rewolinski v. Morgan, 896 F. Supp. 879, 881 (E.D. Wis. 1995). The implied consent law is based upon the legitimate government interest of protecting the public welfare, to wit, removing drunk drivers from the road. Milwaukee County v. Proegler, 95 Wis. 2d 614, 631, 291 N.W.2d 608 (Ct. App. 1980).

¶43 There is no apparent rational justification for permitting English-speaking and hearing drivers access to the implied consent warnings, and purposefully excluding non-English speaking and deaf drivers access to those warnings. Indeed, we have found that deaf persons are entitled to equal access to the legal system. See Wis. Stat. §885.37 (the deaf and hard-of-hearing have a right to interpreters in court); see also State v. Neave, 117 Wis. 2d 359, 344 N.W.2d 181 (1984).[23] However, in light of the purpose of the implied

---

[23]In Neave, this court held that a criminal defendant has a right to an interpreter.

> We do not hold that there is federal constitutional right to an interpreter. We do hold that as a matter of judicial administration, and to avoid questions of effective assistance of counsel and questions of whether inability to reasonably understand testimony resulted in a loss of an effective right to cross-examination, or whether the right had been waived by a defendant or his attorney with the defendant's assent and how such assent was demonstrated, we adopt the rule herein announced. We also conclude that it removes the feeling of having been dealt with unfairly which is bound to arise when part or all of a trial is incomprehensible because of a language barrier. . . . Fairness

consent law--"to facilitate the taking of tests for intoxication and not to inhibit the ability of the state to remove drunken drivers from the highway"--the arresting officer need not take steps to convey the implied consent warnings which would jeopardize his or her ability to obtain evidence of intoxication or get the drunk driver off the road. Neitzel, 95 Wis. 2d at 203-04.[24] The arresting officer need only ensure that the implied consent warnings are reasonably conveyed under the circumstances facing the officer at the time of the arrest under Wis. Stat. §343.305(4). Consequently, §343.305(4) would not treat an accused driver who is deaf differently than one who hears. Because reasonable methods were used which would reasonably convey the implied consent warnings to

---

> requires that such persons who may be defendants in our criminal courts have the assistance of interpreters where needed.

State v. Neave, 117 Wis. 2d 359, 365-66, 344 N.W.2d 181 (1984).

[24]This court has also noted that time is of the essence in obtaining evidence of blood alcohol concentration for both the State and defendants. See State v. Bohling, 173 Wis. 2d 529, 546-47, 494 N.W.2d 399 (1993); see also Wis. Stat. §885.235(1) (admissibility of blood alcohol test based upon sample taken within 3 hours after the event that allegedly was done under the influence of an intoxicant). Because the passage of time impacts the testing for blood alcohol concentration, that an arresting officer employ those reasonable methods that reasonably convey the implied consent warnings, takes into account the time concern. Accordingly, the approach this court develops today serves to advance a rational purpose of §343.305, which is to facilitate the gathering of evidence of drunk driving.

Piddington, there has been no disparate treatment here. Piddington was not denied equal protection under the law.

¶44 Piddington also contends that the federal Rehabilitation Act of 1973, the counterpart to the federal Americans with Disabilities Act (ADA) is applicable here and required the State to provide an interpreter. The rights and responsibilities established by the ADA and the Rehabilitation Act are nearly identical; the two statutes are, for the most part, distinguished by the fact that the Rehabilitation Act applies only to entities receiving public funding. Washington v. Central Catholic High Sch., 181 F.3d 840, 845 n.6 (7th Cir. 1999). "[T]he standards applicable to one act are applicable to the other." Id.

¶45 Case law is in conflict as to whether an arrest is a "benefit[] of the services, programs, or activities of a public entity," and thus covered by the ADA or Rehabilitation Act of 1973. See 42 U.S.C. §12132; 29 U.S.C. §794; see also Rosen v. Montgomery County, Maryland, 121 F.3d 154, 157 (4th Cir. 1997) (arrest is not within the ambit of the ADA); Calloway v. Boro of Glassboro Dep't of Police, 89 F. Supp. 2d 543, 555-56 (D. N.J. 2000) (station-house investigative questioning is covered by the ADA and Rehabilitation Act). Assuming, arguendo, that the Rehabilitation Act covers Piddington's stop and arrest, and thus the standards of both acts are applicable, there is nothing in the record that establishes that the State Patrol receives federal funding, which is a prerequisite to application of the Act. 29 U.S.C. §794. And, even if there were a violation of the Rehabilitation Act here, Piddington's remedy would not be suppression of evidence, but rather an action under the Act or 42 U.S.C. §1983.

¶46 Nonetheless, the State Patrol trooper followed the accommodation guidelines established in the regulations promulgated under the ADA. See 28 C.F.R. §35.160 (2000). ADA regulations state that public entities "shall take appropriate steps to ensure that communications with. . . members of the public with disabilities are as effective as communications with others," and "furnish appropriate auxiliary aids and services where necessary." 28 C.F.R. §35.160(a), (b) (2000). "[P]rimary consideration" is to be given to the disabled individual's request. 28 C.F.R. §35.160(b)(2) (2000). However, the pertinent circumstances should be taken into account.

> Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

56 Fed. Reg. 35694 (July 26, 1991). Similarly, as provided by the parties, State Patrol Policy and Procedures indicate that interpreters should be used if possible and whenever practical, that is, at the "point the trooper or inspector determines that the service of a qualified interpreter is necessary to ensure

effective communication." Wisconsin State Patrol Policy and Procedure Number 5-10. Using note-writing or other auxiliary aids to communicate is also permitted. Id.

¶47 The State Patrol trooper and the Madison police officer used various, acceptable, methods to communicate with Piddington. The trooper used auxiliary aids, such as note-taking and demonstrations, which assisted in his communication with Piddington. According to the notes and the videotape of the stop, there is no indication that Piddington questioned or objected to the trooper's methods of conveying the necessary information. Piddington continued to communicate with the trooper even after he requested an interpreter. Review of the notes and the videotape reveals that Piddington obviously failed the sobriety tests not due to a communication error, but because he was impaired. Indeed, an initial test showed that his blood alcohol level was almost three times the legal limit.

¶48 The trooper also repeatedly ensured that Piddington was following his instructions, and testified that he took more time and was more lenient with Piddington because of the impaired hearing barrier. At the most crucial moment, when Piddington was provided with the Informing the Accused form, there was an officer on hand who knew sign-language. She was not a certified interpreter, but she was conversational in signlanguage. She reviewed and completed the form with Piddington, without objections or questions from Piddington.

¶49 The trooper complied with both the State Patrol Policies and Procedures and federal regulations promulgated under the federal Rehabilitation Act of 1973 by using note-

taking and other auxiliary aids, including an officer with working knowledge of sign-language, to ensure that the necessary information was conveyed to Piddington. Consequently, contrary to Piddington's contention, there was no need for a certified sign-language interpreter here.

III

¶50 Finally, Piddington contends that suppression of his blood test result is justified here, if not based upon an alleged violation of Wis. Stat. §343.305(4) concerning the implied consent warnings, then, based upon the contention that Piddington requested, but did not receive, an alternative test for blood alcohol concentration. Piddington relies upon State v. Renard, 123 Wis. 2d 458, 367 N.W.2d 237 (Ct. App. 1985) and State v. McCrossen, 129 Wis. 2d 277, 385 N.W.2d 161 (1986). In both cases, the circuit court found that the accused driver had repeatedly requested an additional chemical test that was not given. Renard, 123 Wis. 2d at 460; McCrossen, 129 Wis. 2d at 282-83. Also, in both cases, the circuit court suppressed the results of the first tests as "an appropriate sanction" for the failure to perform the second requested test. Renard, 123 Wis. 2d at 461; McCrossen, 129 Wis. 2d at 287.[25]

---

[25]Piddington also relies upon State v. Walstad, 119 Wis. 2d 483, 351 N.W.2d 469 (1984). In Walstad, this court concluded that the test ampoule from the breathalyzer machine need not be provided to the defendant for re-testing. Walstad, 119 Wis. 2d at 527-28. The defendant had not requested a second test, but only requested to test the used ampoule. There is no dispute that an accused driver has a right to request a second test. Id. at 527. There is, however, no evidence that the defendant here requested a second

¶51 Piddington claims that he requested an alternative test. However, unlike Renard and McCrossen, the circuit court here made no factual finding that Piddington had requested a second, alternative test.[26] Piddington requested a blood test as the State Patrol trooper was about to take him to State Patrol headquarters for a breathalyzer test. However, this was before he had been formally notified of his right to request a second test. After he had been informed of his right to request a second test, Piddington did not request such a test. Unlike in Renard and McCrossen, here, Piddington did not request a second alternative test after he submitted to the initial test. Renard, 123 Wis. 2d at 460; McCrossen, 129 Wis. 2d at 281. The only test he requested, he received, that is, the blood test.[27]

---

test after he was informed of his right to request a second test.

[26]The circuit court only found that Piddington needed an ASL interpreter to understand the information given him concerning his right to request a second test. (R. at 28:2.) We have concluded, however, that the trooper needed to use reasonable methods to reasonably convey the implied consent warnings, including the right to request a second test, and, as the circuit court also found, the "attempts of law enforcement to communicate with the defendant were reasonable under all the circumstances." (R. at 28:1-2).

[27]"The second test affords the defendant the opportunity to scrutinize and verify or impeach the results of the. . . test administered by enforcement authorities." Walstad, 119 Wis. 2d at 527. The second test may also provide exculpatory evidence. State v. McCrossen, 129 Wis. 2d 277, 294, 385 N.W.2d 161 (1986). However, Piddington has not even contended, let alone shown, how a second test would have provided impeachment or exculpatory

¶52 Even if Piddington had requested but did not receive an alternative test, he would not be entitled to automatic suppression of the results of the test he did have, as he now contends. As discussed earlier, the implied consent law does not dictate that a violation thereof requires suppression of a blood test as a remedy. Zielke, 137 Wis. 2d at 51. Accordingly, Piddington's reliance upon McCrossen is misplaced. As we explained in Zielke, 137 Wis. 2d at 55-56:

> We acknowledge that in [McCrossen] this court approved suppression of a blood alcohol test in a driving while intoxicated prosecution. In that case, unlike the instant case, the defendant, who was arrested for operating under the influence contrary to sec. 346.63(1)(a), Stats., specifically asked the arresting officer who administered the breathalyzer test if she could have another test, either blood or urine, because she did not believe the results of the first test. The police told the defendant she would have to pay for any alternative test, which is contrary to sec. 343.305(5). The defendant agreed but the police never administered the requested alternative test. In addition, she was never informed by police that she could be released in order to get an alternative test. In fact, though a friend arrived ready to post bail, she was not released until hours later. On those

---

evidence. See id. at 294.

> facts, suppression was an appropriate remedy, but it is by no means required by the implied consent law.

(Emphasis added.)[28]

¶53 There would be no reason for an automatic suppression here, even if Piddington had requested a second test. The conduct of the law enforcement officers with respect to the defendants' requests for an alternative test in Renard and McCrossen, which supported the circuit court's suppression there, is not evident here. In Renard, the defendant was taken to a hospital for injuries following an accident. 123 Wis. 2d at 460. There, an officer arrested Renard for driving while intoxicated. The officer had Renard submit to a blood test, but did not give him the breathalyzer test that he requested. The officer could have inquired at the hospital to determine whether Renard would have been released in time to give him a breathalyzer test. But the officer left, and yet Renard was released in time to take a breathalyzer test. Id. In McCrossen, the defendant asked for an alternative test, and was told she had to pay for it, which was not true. 129 Wis. 2d at 281. McCrossen nonetheless agreed to pay for another test, but she never got it, nor was she informed that she could be released to get the other test. Id. "The defendant also was never informed that there was an alternative test that the police department was prepared to

---

[28]Also, the precise issue before this court in McCrossen was "not whether suppression is appropriate, but whether the denial of a second test deprived the defendant of constitutionally material evidence, and thereby required dismissal of the charge." Id. at 287-88. Piddington does not make such a contention here.

administer at police expense." Id. Here, in contrast, Piddington was not misled; he was accurately informed about the alternative test procedure; and, he got the test he requested.

¶54 Piddington did not request an alternative test after he was informed of that right. Accordingly, assuming arguendo, that somehow his right to request a second test was violated, that is not a reason to suppress the test results of the blood test he did request.[29] There are no other circumstances here that would warrant suppression of the test results even if Piddington had requested an alternative test, after being informed of that right.

IV

¶55 The legislature's intent regarding the implied consent warnings is that accused drivers are to be advised of the warnings, which requires law enforcement officers to utilize those methods which, according to the circumstances that existed at the time of the arrest, were reasonable and would reasonably convey the warnings. Whether the accused driver has actually comprehended the warnings is not part of

---

[29]Moreover, "if evidence is otherwise constitutionally obtained, there is nothing in the implied consent law which renders it inadmissible in a subsequent criminal prosecution," even if there was a "failure to advise the defendant as provided by the implied consent law." Zielke, 137 Wis. 2d at 51-52. One constitutional way for evidence to be obtained is by consent. Id. at 52. Here, Piddington did not merely consent to a blood test, he requested it even before he was given the Informing the Accused form.

the inquiry, rather the focus rests upon the conduct of the officer. We conclude here that the law enforcement officers involved used reasonable methods to reasonably convey the implied consent warnings under the circumstances existing at the time of the arrest. In addition, there was no evidence that Piddington was denied a second test that he requested after the blood test he requested. Accordingly, there was no violation of §343.305(4) which would warrant suppression of Piddington's blood alcohol concentration test results. We thus affirm the court of appeals.

*By the Court*.--The decision of the court of appeals is affirmed.

¶56 SHIRLEY S. ABRAHAMSON, CHIEF JUSTICE *(concurring)*. In this case, one person who is profoundly deaf has come into contact with the legal system. Many people in this state cannot hear, speak, or understand the English language. For some this is because of a hearing impairment, for others because they are fluent in languages other than English. Because language is the basic tool of the legal system these people cannot fully participate.

¶57 According to the 2000 census figures, Wisconsin's Hispanic and Asian populations roughly doubled in the past decade.[1] Getting qualified interpreters for our increasingly diverse and multicultural population is an urgent issue for law enforcement, the courts, social services, and

---

[1]Larry Sandler and Greg Borowski, Madison, Dane County lead growth; Fox Valley grows twice as fast as state's southeastern region, Milwaukee Journal Sentinel, March 9, 2001, at 1A.

others in the legal system.[2] Courts should provide interpreters as a basic service to ensure fairness of court proceedings.[3] As part of its efforts to address court-related interpretation and translation issues, the Wisconsin court system recently published a report entitled "And Justice for All."[4]

¶58 This case illustrates how vital it is for the legislative, executive, and judicial branches of this state to work together to provide qualified interpreters and translators so that persons who cannot hear, speak, or understand English have meaningful access to the legal system. That's the fair and right thing to do.

¶59 DIANE S. SYKES, J. *(concurring)*. I agree with the majority's rejection of the State's argument, adopted by the court of appeals, that the implied consent law requires nothing more than an oral, English language reading of the implied consent warnings, regardless of whether the drunk

---

[2]See Heather Pantoga, Injustice in Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin, 82 Marq. L. Rev. 601 (1999).

[3]"Fairness requires that [those who speak and understand only languages other than English] who may be defendants in our criminal courts have the assistance of interpreters where needed." State v. Neave, 117 Wis. 2d 359, 366, 344 N.W.2d 181 (1984).

[4]Committee to Improve Interpreting & Translation in the Wisconsin Courts, And Justice for All: Improving Interpretation in Wisconsin's Courts (Oct. 2000), available at http://www.courts.state.wi.us/circuit/pdf/Interpreter_Report.pdf

driving suspect can either hear or understand spoken English. The majority adopts a new test for evaluating an arresting officer's compliance with the implied consent statute, one that focuses on the reasonableness of the officer's conduct in administering the implied consent warnings. I write separately to express some concern about the practical operation of the new test.

¶60 As I see it, the question in this case is whether Wis. Stat. §343.305(4) (1995-96), which requires an arresting officer to "orally inform"[1] a drunk driving suspect of his rights and responsibilities under the implied consent law before obtaining a chemical test for intoxication, requires the officer to do so in a language the suspect understands. The circuit court said "yes." The court of appeals said "no." This court says "maybe yes, maybe no." It depends.

¶61 The defendant in this case has been profoundly deaf since birth and communicates in American Sign Language (ASL). He asked for a sign language interpreter at the time of his arrest for drunk driving, but none was available. The arresting officer obtained the assistance of an officer who knew some sign language, but was not fluent in ASL. The officers communicated with the defendant partially in writing and partially through sign language, and the defendant was given the written Informing the Accused form to read. The form was also read to him orally. The defendant

---

[1]The current statute says the officer "shall read" the implied consent warnings to the suspect. Wis. Stat. §343.305(4) (1998-99). The majority opinion concludes that this change in language makes no substantive difference in the interpretation of the statute, majority op. at nn. 15-16, and I agree.

wrote a note asking for a blood test, which registered a blood alcohol concentration of 0.206.

¶62 The defendant moved to suppress the test results, arguing that he should have been provided with an ASL interpretation of the implied consent warnings. The circuit court agreed, and granted the motion. The court of appeals reversed. The majority affirms the court of appeals, but on different grounds. According to the majority opinion, whether an officer has complied with the statute depends upon whether he used "reasonable methods" to "reasonably convey" the implied consent warnings to the suspect--not, apparently, whether the officer used a language the suspect could understand.

¶63 It is not entirely clear what this new "reasonable methods" to "reasonably convey" test requires an officer to do when confronted with a drunk driving suspect who does not communicate in spoken English, either because he is deaf, or because he speaks and understands a foreign language only. The majority does not read the statute to require an interpreter or a recorded translation of the warnings in this situation, as long as the officer's communication "methods" were otherwise reasonable and would "reasonably convey" the warnings.

¶64 I assume that an officer who merely reads the implied consent warnings out loud to a deaf person, without more, will not have complied with the statute under the "reasonable methods" to "reasonably convey" test. It seems to me that this would be considered an unreasonable method of communicating with a deaf person, or would not be considered reasonably likely to convey the warnings to one

who cannot hear. Similarly, I assume that an officer who merely reads the implied consent warnings in English to a suspect who speaks only Spanish will not have complied with the statute, because this, too, would be considered unreasonable under the test.

¶65 These conclusions would be consistent with common sense and the rule of statutory construction that requires courts to avoid interpretations of statutes that lead to absurd or unreasonable results. Verdoljak v. Mosinee Paper Corp., 200 Wis. 2d 624, 636, 547 N.W.2d 602 (1996); State v. Williams, 198 Wis. 2d 516, 532, 544 N.W.2d 406 (1996); State v. Zielke, 137 Wis. 2d 39, 51, 403 N.W.2d 427 (1987). Indeed, this would be the only construction of the statute that "does not produce 'questionable results' and make the law look 'silly.'" Williams, 198 Wis. 2d at 532. The notion that the statute requires only an oral English language reading of the implied consent warnings to a deaf or non-English speaking suspect is manifestly unreasonable. The legislature cannot have intended a meaningless or futile exercise such as the State's suggested construction of this statute would produce in this situation. See, 2A Sutherland, Statutes and Statutory Construction, §45:12, at 94 (6th ed.) ("it cannot be presumed that the legislature would do a futile thing").

¶66 Furthermore, "the cardinal rule in interpreting statutes is that the purpose of the whole act is to be sought and is favored over a construction which will defeat the manifest object of the act." Student Ass'n of Univ. of Wisconsin-Milwaukee v. Baum, 74 Wis. 2d 283, 294-95, 246 N.W.2d 622 (1976); see also, Caldwell v. Percy, 105 Wis. 2d 354, 361-62, 314 N.W.2d 135 (Ct. App. 1981). This statute has a dual purpose: to facilitate the collection of evidence of

intoxicated driving, and to ensure that persons arrested for drunk driving are informed about their rights and obligations under the implied consent law. See majority op. at ¶¶17-18. The second of these purposes would be thoroughly defeated if the statute is read to entitle a deaf or non-English speaking suspect to nothing more than an oral, English language recitation of the warnings, which he has not the slightest hope of comprehending.

¶67 The majority correctly notes that the implied consent law is not the only means by which a law enforcement officer may lawfully obtain chemical evidence of intoxication from a drunk driving suspect. Majority op. at ¶34. The Fourth Amendment permits the warrantless seizure of chemical evidence of intoxication based upon probable cause and exigent circumstances. Zielke, 137 Wis. 2d at 51-52 (citing Schmerber v. California, 384 U.S. 757, 766-72 (1966)). Suppression is not required as a remedy for noncompliance with the implied consent law, although the State may lose the evidentiary benefits of automatic admissibility and the presumption of intoxication specified in Wis. Stat. §§343.305(5)(d) and 885.235. Id.

¶68 Accordingly, I concur in and join the majority's decision to affirm,[2] with the foregoing observations about the practical application of the court's new test for

---

[2]In particular, I agree with the majority's reiteration that there is no "subjective confusion" defense to the admissibility of a chemical test obtained under the implied consent law, as well as its treatment of the defendant's due process, equal protection, Americans with Disabilities Act and Rehabilitation Act arguments.

compliance with the implied consent statute in the case of deaf and non-English speaking suspects.

## APPENDIX B

## IN COURT OF APPEALS
## STATE OF WISCONSIN
## DISTRICT IV

[Filed January 27, 2000]

No. 99-1250-CR

STATE OF WISCONSIN,
*PLAINTIFF-APPELLANT*,

v.

MICHAEL S. PIDDINGTON,
*DEFENDANT-RESPONDENT*.

APPEAL from an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Reversed and cause remanded*.

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 DEININGER, J. The State appeals an order suppressing the results of a blood test for alcohol concentration to which Michael Piddington submitted after his arrest for operating a motor vehicle while under the influence of an intoxicant (OMVWI). The trial court ordered the test

results suppressed after concluding that Piddington, who is hearing impaired, "needed an American Sign Language interpreter to really understand the information he was being given" under WIS. STAT. §343.305(4) (1995-96).[1] The State argues that the arresting officer complied with the informed consent law when he orally informed Piddington of the matters required by the statute. We agree and therefore reverse the order suppressing evidence.

## BACKGROUND

¶2 A Wisconsin State Trooper observed Piddington's vehicle speeding and weaving within its traffic lane at about one o'clock in the morning. After stopping the vehicle, the trooper detected an odor of alcohol and noted that Piddington's eyes appeared "glassy." The trooper also determined from Piddington's speech and gestures, and from a passenger in the vehicle, that Piddington was hearing impaired. The passenger initially assisted the trooper in communicating with Piddington, but most of the subsequent communication between the two was accomplished by writing notes back and forth on the trooper's note pad.

¶3 Piddington and his passenger acknowledged that they had been drinking at a tavern. The trooper requested Piddington to perform field sobriety tests. Before doing so, the trooper requested his dispatcher to check with the City of Madison Police Department and the Dane County Sheriff's Department to see "if there were any officers available that

---

[1]All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise noted.

would be able to assist with sign language," inasmuch as the trooper had obtained such assistance in the past. Through a combination of verbal and written directions, gestures, and physical demonstrations, the trooper instructed Piddington on how to perform the horizontal gaze nystagmus and "walk-and-turn" tests. The trooper determined that Piddington's performance on these tests yielded sufficient "clues" of intoxication to merit a preliminary breath test (PBT), even after making allowances for possible misunderstandings occasioned by Piddington's impaired hearing. The PBT yielded a result of .27, and the trooper arrested Piddington for OMVWI.

¶4 Initially, the trooper was going to take Piddington to his patrol district headquarters for a breath test, but Piddington requested in a written note to have a blood test. The trooper thus proceeded to a Madison hospital for the drawing of a blood sample and was met there by a City of Madison police officer who had "conversational" abilities in "sign language." After the trooper and the Madison officer went over the "Informing the Accused" form with him, Piddington agreed to give a blood sample for alcohol concentration testing. Piddington moved the trial court to suppress the results of the blood test because, among other reasons, the arresting officer "failed to adequately orally inform" him of the matters specified in WIS. STAT. §343.305(4).

¶5 At the hearing on Piddington's motions to suppress the results of the blood test, the trooper testified that the Madison officer both read the "Informing the Accused" form to Piddington and told him to read each paragraph, with an instruction to initial each paragraph "only if he

understood." The Madison officer testified as follows:

> I asked if [Piddington] could read. He indicated he was a graduate from LaFollette High School and could read.
>
> So I had him read this form and asked at each paragraph if he understood what the form or paragraph read. When he did indicate that he understood, then he would initial next to the paragraph stating that he understood that form.
>
> Q How are you communicating with him?
>
> A Initially, it started to be some sign. But we were able to communicate with his voice and him reading my lips.

The officer acknowledged that she was "[n]ot at all" fluent in American Sign Language, but was able to "sign certain sentences and get information across that's pertinent to my job . . . ." Finally, she testified that she also read Piddington the "Informing the Accused" form, having concluded that Piddington could read lips; that Piddington gave "appropriate verbal responses" to her verbal communications; and that he did not indicate "at any time" that he did not understand the "Informing the Accused" form.

¶6 Piddington testified at the hearing through an American Sign Language interpreter. He explained that he was profoundly deaf and that American Sign Language was "the primary way" that he communicated. He claimed that he

did not fully understand the trooper's instructions during field sobriety testing, and that he also had difficulty communicating with the Madison officer when she went over the "Informing the Accused" form with him.

¶7 The trial court concluded that the trooper had probable cause to arrest Piddington for OMVWI and thus denied Piddington's motion alleging that the arrest was unlawful. However, the court granted Piddington's motion to suppress the blood test results for the following reason: "Because of the communication problems due to the defendant's hearing impairment[,] the state has not met its burden with respect to informing the defendant of his right to an alternative test and with respect to the Informing the Accused form." Although the court noted that "the attempts of law enforcement to communicate with [Piddington] were reasonable under all the circumstances, perhaps even exemplary," it found as a fact that Piddington "needed an American Sign Language interpreter to really understand the information he was being given . . . ." The court also suppressed statements Piddington made following his arrest. The State appeals the order suppressing evidence.[2]

## ANALYSIS

¶8 The State's principal argument on appeal is that a law enforcement officer need only "read the 'Informing the Accused' form to an arrested person" in order to fully comply with the provisions of WIS. STAT. §343.305(4). Piddington

---

[2]*See* WIS. STAT. §974.05(1)(d)2.

claims, however, that the State may not make that argument in this court because it was not made, or "even hinted at," in the trial court. Piddington cites our statements in ***State v. Rogers***, 196 Wis. 2d 817, 827, 829, 539 N.W.2d 897 (Ct. App. 1995), that "[w]e will not . . . blindside trial courts with reversals based on theories which did not originate in their forum," and that "the appellant [must] articulate each of its theories to the trial court to preserve its right to appeal." ***Id.*** at 827, 829. We agree with the cited propositions, but we conclude that the State is not precluded on this record from making the argument it advances on appeal.

¶9 At the conclusion of the suppression hearing, the trial court opted for oral argument from the parties in lieu of written briefs. Piddington's counsel argued first, analogizing the requirements of WIS. STAT. §343.305(4) to ***Miranda*** warnings,[3] and asserting that Piddington had a due process/fundamental fairness right to receive the statutory information in a fashion that he could "adequately understand." Defense counsel also argued that Wisconsin State Patrol policies and procedures, as well as the Americans with Disabilities Act, required that Piddington be furnished with an interpreter skilled in American Sign Language before the trooper asked him to submit to a chemical test for alcohol concentration.

¶10 The State responded, first, that the evidence at the hearing was sufficient to show that Piddington *did* understand the substance of what was communicated to him

---

[3] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

by the arresting trooper and the Madison officer. Next, however, the prosecutor told the court:

> In perhaps an extreme attempt to follow the letter of Section 343.305, the Implied Consent Law, [the trooper] insisted on orally informing Mr. Piddington of his rights, which is by the words of the statute what the statute calls for.

The prosecutor went on to argue that the implied consent law was "intended to facilitate the taking of tests for intoxication, and *not* to inhibit the ability of the state to remove drunken drivers from the highway." ***See Scales v. State,*** 64 Wis. 2d 485, 494, 219 N.W.2d 286 (1974) (emphasis added). Finally, the prosecutor asserted that Piddington's claim that the "Implied Consent Law does not apply to him unless the state is able to facilitate him with an interpreter" conflicts with judicial recognition that evidence of intoxication "is dissipating" during the stop, field sobriety testing, arrest, transport and breath- or blood-testing of a driver suspected of OMVWI. *See, e.g.*, ***Schmerber v. California,*** 384 U.S. 757, 770-71 (1966); ***State v. Bohling,*** 173 Wis. 2d 529, 494 N.W.2d 399 (1993).

¶11 We conclude that the State preserved its right to make its present argument by making known in the trial court its position that the arresting officer's actions after he arrested Piddington complied with the statutory requirement to "inform the accused." *See* WIS. STAT. §343.305(4). The argument the State now makes is at most a refinement of the argument it presented in the trial court. The State neither raises a new issue nor advances a theory different than one it

presented in the trial court.[4]

¶12 Having concluded that there is no obstacle to our considering the State's assertion that WIS. STAT. §343.305(4) requires nothing more than that an arresting officer "orally inform" an OMVWI arrestee of the required information, we must now ask whether the assertion is correct. We conclude that it is.

¶13 Piddington's principal argument in support of the trial court's decision is that the "informing the accused" requirement under WIS. STAT. §343.305(4) is analogous to ***Miranda*** warnings, which, according to Piddington, must be conveyed "in a language the person does understand and comprehend." *See* ***State v. Santiago***, 206 Wis. 2d 3, 13, 556 N.W.2d 687 (1996) ("When a suspect cannot communicate in English, law enforcement officers should give the ***Miranda*** warnings in a language the suspect understands in order to ensure that the suspect comprehends the ***Miranda*** warnings and can knowingly and intelligently waive the ***Miranda*** rights."). In equating the requirements of §343.305(4) to

---

[4]The "waiver" or forfeiture rule we discussed and applied in ***State v. Rogers***, 196 Wis. 2d 817, 539 N.W.2d 897 (Ct. App. 1995), is a "rule . . . of administration," and does not affect the power of an appellate court to address an issue first raised on appeal if, in its discretion, the court chooses to do so. *See* ***Brown County v. DHSS***, 103 Wis. 2d 37, 42, 307 N.W.2d 247 (1981). Because we conclude that the State did not forfeit its right to make the argument it makes on appeal, it is not necessary for us to consider whether we should exercise our discretion to forego application of the waiver rule.

***Miranda***, Piddington relies on the following statement from our opinion in ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 276, 542 N.W.2d 196 (Ct. App. 1995): "[T]he warnings provided drivers under the implied consent law are analogous to those employed in ***Miranda***-type cases."

¶14 We clarified later in the ***Quelle*** opinion, however, that the similarity between the two "warnings" was a "functional" one, and that their sources were quite different. *See id.* at 277 n.1, 278. Nowhere in the ***Quelle*** opinion did we suggest that the requirements of the implied consent law were governed by all of the case law which has developed and refined the requirements and operation of the ***Miranda*** holding. In fact, we agree with the State that our ultimate conclusion in ***Quelle*** suggests just the opposite. We concluded that the supreme court had not recognized "subjective confusion" as a "defense" in proceedings relating to the requirements of WIS. STAT. §343.305(4); in other words, the implied consent law does *not* "require assessing the *driver's perception* of the information delivered to him or her." ***Id.*** at 280. Rather, the adequacy of the implied consent "warning process" is to be judged objectively via a three-part inquiry which focuses on whether the arresting officer omitted or oversupplied information to the OMVWI arrestee which affected the person's choice regarding chemical testing. *See id.* We specifically rejected a claim that the officer had "a duty to 'explain' and not merely read the information form." ***Id.***

¶15 We conclude that it is but a small step from our analysis and discussion in ***Quelle*** to a conclusion that, so long as an arresting officer "orally informs" an arrestee of the

correct required information, judicial inquiry is over.[5] That is,

---

[5]WISCONSIN STAT. §343.305(4) (1995-96), which was effective at the time of Piddington's arrest, provided that at the time an arresting officer requests an OMVWI arrestee to submit to testing for alcohol concentration, the "person shall be orally informed by the law enforcement officer" of certain information specified in the statute. The required information related to the person's "deemed consent" to a test, sanctions for refusing the test, possible sanctions if testing shows a prohibited alcohol concentration, and rights to additional testing.

WISCONSIN STAT. §343.305(4) (1997-98), applicable to tests requested as of August 1, 1998, provides instead that the officer "shall read the following to the person from whom the test specimen is requested:"

> "You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.
>
> This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing

a court need not delve into whether the information was properly perceived or understood by the OMVWI arrestee. There are several reasons why this conclusion is the correct one. First, and most importantly, there is nothing in the plain language of WIS. STAT. §343.305 to suggest otherwise. Indeed, since the statute requires the information to be provided only to persons who are probably intoxicated, it is unlikely that the legislature intended a person's understanding or comprehension of the information to be determinative of

---

> can be used against you in court.
>
> If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.
>
> If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified."

We conclude that the recent amendment to the "informing the accused" requirement does not affect our analysis or conclusion. The amended requirement that an officer simply "read" certain information to an arrestee, if anything, strengthens our conclusion that the legislature's intent is that an officer's duty is to provide the correct information to an arrestee, not that the officer must guarantee comprehension of it.

compliance with the statute.[6]

¶16 As we discussed in ***Quelle***, unlike ***Miranda*** warnings which have constitutional underpinnings, the "informing the accused" requirement is purely statutory. ***See Quelle***, 198 Wis. 2d at 277 n.1. The Supreme Court in ***Schmerber v. California***, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966) held that a state-compelled blood test following a person's arrest for OMVWI does not violate the Fourth, Fifth or Fourteenth Amendments to the U.S. Constitution. Thus, an arrestee's understanding or comprehension of the information required to be provided under WIS. STAT. §343.305(4) is not needed to legitimize a knowing and informed waiver of constitutional rights, as is the case with ***Miranda*** warnings. We conclude that the legislature could have chosen to implement the implied consent law without directing law enforcement to inform arrestees of any of the information the statute specifies. Compliance with the statutory directive is mandatory, but there is no constitutional justification for judicially imposing requirements which go beyond what the statute requires.

---

[6] *See* ***Village of Oregon v. Bryant***, 188 Wis. 2d 680, 693, 524 N.W.2d 635 (1994) ("[I]t must be remembered that the accused, who is the recipient of the information, has been determined, to a degree of probable cause, to be under the influence of alcohol."); *also see* ***State v Weishar***, 78 Ore. App. 468, 717 P.2d 231, 235 (Or. App. 1986) ("[T]he legislature could hardly have contemplated that it was necessary that there be a completely knowing and understanding submission [to the test]. If this were the case, the only people who could be tested would be those who were not sufficiently intoxicated to interfere with their mental processes.") (citation omitted).

¶17 The State has brought to our attention appellate decisions from several other states where courts have ruled that law enforcement agencies need not provide interpreters for hearing impaired persons in order to comply with "informing the accused" requirements similar to Wisconsin's. The hearing impaired defendant in ***Commonwealth v. Mordan***, 615 A.2d 102 (Pa. Super. 1992), on facts very similar to those before us, argued that "an interpreter should have been provided so that he could exercise his statutory right to refuse the test and be informed of the consequences of a refusal." ***Id.*** at 105. The relevant Pennsylvania statute provided that "it shall be the duty of the police officer to inform the person that the person's operating privilege will be suspended upon refusal to submit to chemical testing." ***Id.*** at 108 (citation omitted). The court concluded that although a "knowing refusal" might be required prior to imposing sanctions for refusing to submit to testing, "[n]o where does the law require the officer to make certain that the motorist understands that he could exercise a right to refuse a breathalyzer test. . . . [A motorist has no] right to a knowing and conscious submission to the breath test." ***Id.*** at 108-109.

¶18 We acknowledge that in Wisconsin, arresting officers must provide more information to an OMVWI arrestee than simply the consequences of refusing a test. *See* WIS. STAT. §343.305(4) (1997-98). The additional information required under our statute, however, does not undermine the Pennsylvania court's basic rationale-that a hearing impaired motorist has neither a constitutional nor a statutory right to an interpreter before submitting to a test for alcohol concentration. The Pennsylvania court relied in part on the reasoning of the Oregon Court of Appeals in ***State v Weishar***, 717 P.2d 231, 235 (Or. App. 1986). Oregon's

"informing the accused" requirement was more extensive than that described in ***Mordan***, in that it required that the arrestee be told of the consequences of both a test result over the legal limit and a refusal to submit to testing. ***Id.*** at 236. Nonetheless, the Oregon court also concluded that a hearing impaired motorist was not entitled to an interpreter, and that the legislative purpose behind the information requirement did not "require that [a] defendant understand what he has been told. . . ." ***Id.*** at 237.[7]

¶19 Piddington has not cited any occasion where an appellate court has come to a contrary conclusion regarding the requirements of a state implied consent law. The State, however, notes that the Georgia Court of Appeals has concluded that arresting officers in that state were required to obtain a qualified sign-language interpreter to convey implied consent law information to a hearing impaired person under a Georgia statute that provided as follows:

> No interrogation, warning, informing of rights, taking of statements, or other investigatory procedures shall be undertaken until a qualified interpreter has been provided; and no . . . evidence acquired from the hearing impaired person shall be admissible in any criminal . . . proceeding unless such was knowingly and voluntarily given through and

---

[7] ***See also Warner v. Commissioner of Pub. Safety***, 498 N.W.2d 285 (Minn. Ct. App. 1993); ***People v. Long***, 693 N.E.2d 1260 (Ill. App. 1998).

in the presence of a qualified interpreter.

***Allen v. State,*** 463 S.E.2d 522, 523-529 (Ga. App. 1995).

¶20 We conclude that the rationale of the Georgia court's holding is not applicable to the present facts because Wisconsin has no similarly worded statute. Moreover, after stating its conclusion that the test results must be suppressed in light of the violation of the quoted statute, the Georgia court went on to explain at length why the legislature should repeal or amend the provision as it related to alcohol tests under the implied consent law:

> Although we recognize the necessity to "convey" the proper advice to the hearing impaired in a fair manner, in our view it is not reasonable to condition admissibility of DUI evidence on the presence of a "qualified interpreter" . . . when it is a near certainty that none will be available at the times most DUIs occur.
>
> . . . .
>
> . . . The legislature should change this law.

*Id.* at 525-526.

¶21 Finally, we turn briefly to a consideration of Piddington's alternative argument that the test result should be suppressed because the administration of the test without a qualified sign language interpreter being present violated the federal Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and State Patrol policies and

procedures. We acknowledge that each of these sources suggests that reasonable steps should be taken to enable hearing impaired persons to communicate effectively during interactions with law enforcement officers.[8] It is not necessary, however, for us to determine whether the trooper complied with these provisions, because even if he did not, the remedy for a violation lies elsewhere and not in the suppression of evidence in this criminal prosecution. ***See State v. Mieritz***, 193 Wis. 2d 571, 574, 534 N.W.2d 632 (Ct. App. 1995) ("The exclusionary rule requires suppression of evidence 'only when the police obtain[] the evidence in violation of the defendant's constitutional rights,' or in violation of a statute that expressly requires suppression as a sanction.") (citation omitted). Piddington cites no federal or state statute, or any other authority, that includes suppression as a remedy for a violation of the federal laws and state patrol policies he discusses in his brief.[9]

---

[8]In this regard, we note again that the trial court found "the attempts of law enforcement to communicate with the defendant were reasonable . . . perhaps even exemplary. . . ." The trooper who arrested Piddington requested assistance from another officer who possessed a language skill that aided communications with him, and Piddington was allowed to read the "Informing the Accused" form for himself, in addition to having it read to him. We agree with the trial court that these steps are to be commended as good law enforcement practices.

[9]The Wisconsin Supreme Court has held that even police violations of the implied consent statute itself do not warrant suppression of an alcohol test result. ***See State v. Zielke***, 137 Wis. 2d 39, 41, 403 N.W.2d 427 (1987). The court has also held, however, that a court may, in its discretion, order suppression for certain aggravated violations of the requirements of WIS. STAT.

## CONCLUSION

¶22 For the reasons discussed above, we reverse the trial court's order suppressing the blood test result and other evidence gathered following Piddington's arrest, and we remand for further proceedings consistent with this opinion.

*By the Court.*-Order reversed and cause remanded.

Recommended for publication in the official reports.

---

§343.305. *See id.* at 55-56 (discussing ***State v. McCrossen***, 129 Wis. 2d 277, 385 N.W.2d 161 (1986)). Piddington relies on ***McCrossen*** in arguing that the trial court's suppression order should be affirmed. The State, however, has not argued that the ***Zielke*** rationale should govern on the present facts, relying instead on its theory that the arresting officer did not violate §343.305. Because we agree with the State's assertion, and because the State has not argued that suppression would not be proper even if the trooper violated the statute, we do not address the issue.

## APPENDIX C

**CIRCUIT COURT**
**STATE OF WISCONSIN**
**DANE COUNTY**
**BRANCH 11**

[Filed May 10, 1999]

No. 99 CT 297

STATE OF WISCONSIN,
*Plaintiff*,

v.

MICHAEL S. PIDDINGTON,
*Defendant*.

**DECISION AND ORDER**

The court heard evidence regarding the following four defense motions on May 3, 1999:

1. Request for Determination of the Admissibility of Statements (of the defendant)

2. Motion to Suppress - Blood Test Results - Alternate Test

3. Motion to Suppress - Unlawful Arrest

4. Motion to Suppress - Blood Test Results - Informing the Accused

The court has also reviewed the videotape.

The third motion is denied. The officer did have probable cause to arrest. The facts supporting this finding include speeding, weaving, abrupt swerving motions, strong odor of intoxicants, glassy eyes, HGN test, admission of drinking, PBT, and lack of balance.

The second and fourth motions are granted. Because of the communication problems due to the defendant's hearing impairment the state has not mets its burden with respect to informing the defendant of his right to an alternative test and with respect to the Informing the Accused form.

While the attempts of law enforcement to communicate with the defendant were reasonable under all the circumstances, perhaps even exemplary, the fact is that the defendant needed an American Sign Language interpreter to really understand the information he was being given with respect to the alternative test, the field sobriety tests and the Informing the Accused form. As in the case of someone who speaks another language "broken" communication may provide a vague and general understanding to a defendant but it is not sufficient to the extent necessary for the State to meet its burden that the defendant understood what he is entitled to understand before the evidence and statements obtained can be used against a defendant.

For the same reasons, statements made after the point of arrest are suppressed.

Dated: May 6, 1999.

BY THE COURT:

/s/_____
Daniel R. Moeser
Circuit Judge

cc: ADA Jay Mimier
Atty. Michele Tjader